



NYSPELRA Newsletter: February 2005

LEGISLATIVE UPDATE

In January, the Governor took no action on these bills, passed by the State Legislature and sent to him in late December, just prior to its adjournment. When that occurs, the Governor has 30 days to sign a bill into law. Should that not be done, the bill fails to become law and it is referred to as a "pocket veto". No message need be generated any explaining objection(s). New York is in a distinct minority of states that allow such gubernatorial action. While such a veto cannot be overridden by the Legislature, a new bill can certainly be introduced in the next session. The pocket vetoes involved these bills from the 2004 Session:

- S. 3208-A, which would have provided a union that might file an improper practice charge alleging an employer failure to negotiate in good faith with an expedited hearing at PERB because of an alleged bargaining stall on negotiating a successor agreement. Veto No. 298;
- S. 5424-B, which would have required the testing at employer expense of certain public safety employees for a possible exposure to certain blood-borne transmissible diseases. A law requiring the same testing currently exists, but the testing is at the expense of the workers' compensation carrier. Veto No. 300;
- S. 6478, which would have expanded a current prohibition against police department ticket quotas to include a ban against departmental quotas for arrests and summonses. Veto No. 309;
- S. 6790, which would have expanded from 1 to 2 years the amount of leave available under §71 of the Civil Service Law to be allowed an employee absent from work because of an occupational injury or disease. Veto No. 310; and
- S. 7569, which would have provided public safety personnel that are currently or later be covered by any heart disability retirement provision that any heart disability that might be incurred after successfully passing the entry physical would be presumed to be a rebuttable job-related accident. Accidental disabilities are in essence rebuttable. Veto No. 317.

The Governor is to be commended for having vetoed several bills which were passed overwhelmingly or even unanimously by the 2004 Legislature. In addition to several bills which addressed mandatory subjects of negotiation, something that should have instead been negotiated with a public employer, there were vetoes of bills that would have 1) addressed labor relations issues that were nonexistent; 2) allowed PERB to impose punitive damages on public employers guilty of repeat improper practice charges, something neither a State or federal court nor a jury can impose; and 3) added significant additional costs to the employer pension bill due in 2005 that was already a record increase from the prior year's bill.

While NYSPELRA does not generate memos in reaction to bills in the Legislature, many members work for public employers that belong to statewide associations that as a matter of course . There is no question that your legislators were advised of the adverse impact that the vetoed bills would have had on public employers, had any become law. While these Albany-based organizations convey reactions to bills, contact from local officials to legislators should not be ignored.

A CRIMINAL INVESTIGATION?: MIRANDA YES, WEINGARTEN NO

An appellate court has unanimously overturned a PERB decision, which had extended a unionized employee's right to union representation to a criminal investigation. The case involved a municipality and its police department in an instance in which a police officer was under criminal investigation by the department. The officer sought union representation during the questioning and it was denied. However, Miranda rights were provided, as they must be. The union representing the officer filed an improper practice charge, alleging that the denial of union representation in the criminal investigation was illegal. The Board agreed, but the municipality sued to vacate the decision. The court held that the State has a strong public policy prohibiting union interference with criminal investigations and held that the decision was an abuse of discretion. *City of Rochester v. NYS Public Employment Relations Board*, decided February 5.

Editor's note: Had some other law enforcement agency conducted the investigation, it is submitted that the agency reaction would have been different.

PERB DECISIONS

The following decisions have been issued by either the Public Employment Relations Board or its staff. Any summary that might be of interest should be reviewed as to the facts and circumstances of the case and, if a decision is one by an administrative law judge, whether the decision was appealed to the Board. In some instances, a Board decision may have resulted in litigation. E-mail your editor, John Galligan, at galli14@earthlink.net for a copy of a summarized decision if you do not receive published decisions. Go to www.perb.state.ny.us for summaries of decisions since 1986 and for downloading agency forms.

- a past practice that may exist in one bargaining unit is not applicable to another. September 8 ALJ decision in Nassau County;
- Interference with the exercise of Taylor Law rights is established when an employer by its actions communicates to employees that it might take steps to punish or reward employees for their exercise of rights protected under the Taylor Law. In determining whether an employer has engaged in such conduct, it will be presumed that the employer intended consequences that it knows or should know will undoubtedly flow from its actions. Conduct inherently destructive of the basic rights guaranteed employees under §202 of the Civil Service Law may result in a determination that a violation of §209-a(1)(a) has occurred. June 6 ALJ decision in Village of Freeport;
- how an employer determines to fund an employee benefit and the source from which funds are obtained to provide the benefit are management prerogatives closely related to the manner by which a public employer chooses to deliver services to the public. A unilateral change in the source used to fund a particular employee benefit is not an improper practice because a demand that a program be funded from a specified revenue source is not a mandatory subject of a negotiation. June 17 ALJ decision in Malverne UFSD;
- in order to sustain an improper practice charge alleging a failure to negotiate over a unilateral change in a past practice, the practice must involve a mandatory subject of negotiation. June 17 ALJ decision in Malverne UFSD;
- a union's choice or appointment of its own representatives is an internal union matter that is protected from employer interference under the Taylor Law. June 6 ALJ decision in Village of Freeport; and

- a unit placement petition raises the issue of the appropriateness of the placement of a position within a bargaining unit. September 9 ALJ decision in City of Jamestown.

JOB VACANCY

The City of Elmira seeks applications for the position of Personnel Director. Duties include collective bargaining with 3 unions; assisting in recruiting, hiring, and retention; processing grievances and representation in arbitration; administering employee benefit programs including retirement, health insurance and workers' compensation; supervising maintenance of personnel and time records; and administering progressive discipline. Minimum qualifications are a) high school or equivalency diploma and 8 years experience in personnel management, labor relations, or in the practice of municipal labor negotiations; or b) a bachelor's degree and 4 years experience as outlined above; or c) a master's degree in personnel management, industrial relations, public or business administration and 2 years experience as outlined above; or a J. D. and 2 years experience as outlined above. Salary commensurate with experience; base is \$53,624. The position is open until filled. A resume' and letter of interest may be sent to Sam Iraci; City Manager; City Hall; 317 E. Church Street; Elmira 14901 or e-mail via PDF to siraci@ci.elmira.ny.us